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DEPARTMENT OF COMMERCE

International Trade Administration

[C-560-834]

Utility Scale Wind Towers from Indonesia: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of utility scale wind towers (wind towers) from Indonesia. The period of investigation is January 1, 2018 through December 31, 2018.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Alex Wood or Melissa Kinter, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1959 or (202) 482-1413, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 13, 2019, Commerce published the *Preliminary Determination* of the countervailing duty (CVD) investigation, which aligned the final determination in this CVD

investigation with the final determination in the companion antidumping duty (AD) investigation of utility scale wind tower from Indonesia.¹

A summary of the events that occurred since Commerce published the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final determination, are discussed in the Issues and Decision Memorandum.² The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/index.html>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is wind towers from Indonesia. For a complete description of the scope of the investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,³ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁴ No interested party commented on the scope of the investigation as it appeared in the *Initiation*

¹ See *Utility Scale Wind Towers from Indonesia: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 68109 (December 13, 2019) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

² See Memorandum, "Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Utility Scale Wind Towers from Indonesia," dated concurrently with, and hereby adopted by this notice (Issues and Decision Memorandum).

³ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

⁴ See *Utility Scale Wind Towers from Canada, Indonesia, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations*, 84 FR 38216 (August 6, 2019) (*Initiation Notice*).

Notice. Therefore, Commerce has made no changes to the scope of this investigation since the *Preliminary Determination*.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised is attached to this notice as Appendix II.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, Commerce determines that there is a subsidy, *i.e.*, a financial contribution by an “authority” that gives rise to a benefit to the recipient, and that the subsidy is specific.⁵ For a full description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

Verification and Use of Facts Otherwise Available

Commerce normally verifies information relied upon in making its final determination, as provided in section 782(i) of the Act. In March 2020, we conducted verification of the information submitted by the Government of Indonesia and the mandatory respondent, PT Kenertec Power System (Kenertec), for use in Commerce’s final determination. We used standard verification procedures, including an examination of relevant accounting records and original source documents provided by the respondents.⁶ For the reasons discussed in the Issues and Decision Memorandum, we concluded verification early.

⁵ *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

⁶ For discussion of our verification findings, *see* the following memoranda: Memorandum, “Verification of the Questionnaire Responses of the Government of Indonesia,” dated April 1, 2020 and Memorandum, “Verification of PT Kenertec Power System’s Questionnaire Responses,” dated March 30, 2020; *see also* Memorandum,

Pursuant to section 776(a)(2)(D) of the Act, in situations where information has been provided but the information has cannot be verified in accordance with section 782(i) of the Act, Commerce may use “facts otherwise available” on the record in reaching the applicable determination. Accordingly, where Commerce was unable to verify certain information due to the early conclusion of verification, we have relied on the information submitted on the record that we used in making the *Preliminary Determination*, as facts otherwise available in making our final determination.

Further, pursuant to section 776(a)(1) of the Act, where necessary information is not available on the record, Commerce may rely on facts otherwise available on the record in reaching the applicable determination. Accordingly, in certain circumstances in this final determination where necessary information is missing from the record, we have relied on the information submitted to the record as facts otherwise available, pursuant to section 776(a)(1) of the Act.

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties and our verification findings, we made certain changes to the subsidy rate calculations for Kenertec. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Final Affirmative Determination of Critical Circumstances

In accordance with section 703(e)(1)(B) of the Act, Commerce preliminarily determined that critical circumstances existed for all imports of utility scale wind towers from Indonesia.⁷

“Antidumping and Countervailing Duty Investigations of Utility Scale Wind Towers from Indonesia: Early Conclusion of Verifications,” dated March 27, 2020.

⁷ See *Utility Scale Wind Towers from Canada, Indonesia, and the Socialist Republic of Vietnam; Countervailing Duty Investigations: Preliminary Determinations of Critical Circumstances*, 85 FR 7724 (February 11, 2020).

For this final determination, we continue to find that critical circumstances exist with respect to all imports of wind towers from Indonesia. For a full description of the methodology and results of our analysis, *see* the Issues and Decision Memorandum.

All-Others Rate

In accordance with section 705(c)(5)(A) of the Act, we continue to assign the countervailable subsidy rate calculated for Kenertec as the all-others rate applicable to all exporters and/or producers not individually examined.⁸

Final Determination

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we calculated an individual estimated subsidy rate for Kenertec. We determine that the following total estimated net countervailable subsidy rates exist:

Producer/Exporter	Percent <i>Ad Valorem</i>
PT Kenertec Power System	5.90
All Others	5.90

Disclosure

We intend to disclose to interested parties the calculations and analysis performed in this final determination within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination*, and pursuant to sections 703(d)(1)(B), (d)(2), and (e)(2)(A) of the Act, Commerce instructed U.S. Customs and Border Protection

⁸ *See Preliminary Determination.*

(CBP) to suspend liquidation of all entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after September 14, 2019, which is 90 days prior to the publication of the *Preliminary Determination* in the *Federal Register*. In accordance with section 703(d) of the Act, we instructed CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after April 11, 2020, but continue the suspension of liquidation of all entries from September 14, 2019 through April 10, 2020.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order, reinstate the suspension of liquidation under section 706(a) of the Act, and require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. Because the final determination in this proceeding is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of wind towers from Indonesia no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that material injury or threat of material injury does exist, Commerce will issue a

CVD order directing CBP to assess, upon further instruction by Commerce, countervailing duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the “Continuation of Suspension of Liquidation” section.

Notification Regarding Administrative Protective Orders

In the event the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: June 29, 2020.

Jeffrey I. Kessler,
Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation consists of certain wind towers, whether or not tapered, and sections thereof. Certain wind towers support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.*, where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.*, flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with non-subject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof, unless those components are shipped with the tower sections.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000. Wind towers of iron or steel are classified under HTSUS 7308.20.0020 when imported separately as a tower or tower section(s). Wind towers may be classified under HTSUS 8502.31.0000 when imported as combination goods with a wind turbine (*i.e.*, accompanying nacelles and/or rotor blades). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope
- IV. Scope Comments
- V. Final Determination of Critical Circumstances
- VI. Use of Facts Otherwise Available
- VII. Subsidies Valuation Information
- VIII. Analysis of Programs
- IX. Analysis of Comments
 - Comment 1: Whether the Government of Indonesia (GOI) Entrusted or Directed PT Krakatau POSCO (Krakatau POSCO) to Provide a Financial Contribution to PT Kenertec Power System (Kenertec)
 - Comment 2: Whether the Benchmark Information for the Provision of cut-to-length (CTL) Plate for Less Than Adequate Renumeration (LTAR) is Accurate
 - Comment 3: Whether the GOI Provided Electricity for LTAR
 - Comment 4: Whether Commerce's Preliminary Critical Circumstances Determination Was Correct
 - Comment 5: Whether the Exemption from Import Income Tax Withholding Program is Specific
 - Comment 6: Whether Commerce Should Extend the Final Determination to Investigate the Upstream Subsidy Allegation
 - Comment 7: Whether Commerce Sufficiently Verified the GOI's Questionnaire Responses with Respect to PT Krakatau Steel (Persero) TBK (Krakatau Steel) and Krakatau POSCO
- X. Recommendation

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